IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 5194 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

H M G INDUSTIES LIMITED

Versus

STATE OF GUJARAT

Appearance:

MS SK VISHEN for M/S TRIVEDI & GUPTA for Petitioners

MR SP DAVE Learned APP for Respondent No. 1

MR SV RAJU for Respondent No. 2

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 07/02/2001

ORAL JUDGEMENT

Heard Ms. Sangeeta K. Vishen for M/s. Trivedi & Gupta Advocates for the petitioners.

Rule. Mr. Vimal Patel learned advocate waives the service of rule on behalf of respondent no.2. Mr. S.P.Dave learned APP waives the service of rule on behalf of respondent no.1 - State.

1. The petitioners have prayed to quash the Criminal Complaint No. 788 of 1999 filed by the present respondent no.2 in the Court of learned JMFC, Ankleshwar for the offences made punishable under Sections 406 and 420 of the Indian Penal Code on the facts that petitioner nos. 2 and 3 (hereinafter referred to as "original accused nos. 2 and 3) represented to the respondent no.2 (hereinafter referred to as "complainant") that the company is sound and that they should be supplied with the material as per order placed by them. That on the assurance of original accused nos. 2 and 3, complainant supplied the material on various dates as per order placed and thereby, enjoyed the confidence of the complainant Company. That complainant has supplied the material worth Rs. 2,37,281/- which was duly received by the accused. However, the accused did not disclose the financial condition of accused no.1 company. That despite knowing the fact that accused no.1 company is going to be a sick unit, original accused nos. 2 and 3 have misrepresented the fact and availed the benefit from the complainant and thereby, have committed the offences alleged.

2. The respondent no.2 has filed affidavit in reply and the petitioners have filed further affidavit. Both the parties have filed documentary evidence also. From the material produced on record, it appears that the petitioners have been purchasing goods from complaiant no.2 since 1995 and the business transaction of purchasing consignments have been continued upto 1997. That the petitioners have been making payment of the goods purchased till June, 1997. It appears that disputed consignment was ordered and received by the petitioners in the month of July, 1997. That petitioner no.1 company passed a resolution in November, 1997 to make an application before the BIFR and in March, 1998, petitioner no.1 company has been declared as a sick unit. In view of the said fact, it could not be said that original accused nos. 2 and 3 knowingly made false representation to the complainant to obtain the goods

with ulterior motive not to make the payment and thereby, have cheated the complainant. On plain reading of the complaint, it prima facie appears that dispute between the parties is of a purely civil nature ant it does not disclose the ingredients of offences alleged. Under the circumstances, if the chances of establishing the offences are blick, the complaint has to be quashed at this stage as it would not serve the purpose by sending the parties to trial on the facts averred in the complaint.

3. The learned JMFC, Ankleshwar ought to have considered this aspect before issuing the process and as such, order of issuing summons against the present petitioners is also deserves to be quashed and set aside.

4. On the basis of foregoing discussion, impugned complaint bearing Criminal Complaint No. 788 of 1999 along with the order passed by learned JMFC, Ankleshwar dated 3.5.1999 issuing summons against the present petitioners are hereby quashed and set aside. Rule to that extent is made absolute.

(A.K.Trivedi,J.)

(vipul)